



BILLING CODE: 3510-55

DEPARTMENT OF COMMERCE

[Docket No. 110906558-1551-01]

Privacy Act of 1974; System of Records

AGENCY: Office of Inspector General (OIG), Department of Commerce (DOC).

ACTION: Notice of Proposed Amendment to Privacy Act System of Records, “Investigative and Inspection Records -- COMMERCE/DEPT-12.”

SUMMARY: In accordance with the Privacy Act of 1974, as amended, 5 U.S.C. § 552a(e)(4) and (11), and Office of Management and Budget (OMB) Circular A-130, Appendix I, “Federal Agency Responsibility for Maintaining Records about Individuals,” DOC OIG proposes to amend the system of records entitled “Investigative and Inspection Records -- COMMERCE/DEPT-12,” to include the new automated Inspector General Complaint Intake Reporting and Tracking System (“IG-CIRTS”); change the system name to “OIG Investigative Records”; update OIG routine uses; update OIG’s practices for electronically storing, retrieving, and safeguarding records in the System, and generally update the systems notice. The new system will enhance efficiency in the complaint intake and case tracking processes, reduce burdens of paper storage, and update protections in access and storage of information within the records system. Accordingly, “Investigative and Inspection Records – COMMERCE/DEPT – 12,” published in the Federal Register, 50 FR 9102-9105 (Mar. 6, 1985), is amended and restated as shown below. DOC OIG invites public comment on the amended system announced in this publication.

DATES: Comment date: To be considered, written comments on the proposed amended system must be submitted on or before [insert date 30 days after publication in the Federal Register].

Effective Date: Unless comments are received, the amended system of records will become effective, as proposed, on the date a subsequent notice is published in the Federal Register.

ADDRESSES: Please address comments to Counsel to the Inspector General, Room 7892, U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Washington, D.C. 20230; by e-mail to IGCounsel@oig.doc.gov; or by facsimile to (202) 501-7335. For further information, general questions, and privacy-related issues, please contact the Counsel to the Inspector General at (202) 482-5992.

SUPPLEMENTARY INFORMATION: The Inspector General Act of 1978, as amended, 5 U.S.C. App. 3, authorizes DOC OIG to conduct investigations to detect and prevent fraud, waste, mismanagement and abuse, and to promote economy and efficiency, in the DOC's programs and operations. OIG uses records in this system in the course of investigating individuals and entities suspected of criminal, civil, or administrative misconduct, and in supporting related judicial and administrative proceedings. OIG's Office of Investigations (OI) maintains and manages OIG's investigative records. The updates to the system will not involve the collection of additional categories of information, but will provide methods for data tracking and retrieval previously unavailable. The new system will enhance efficiency in the complaint intake and case tracking processes, reduce burdens of paper storage, and update protections in access and storage of information within the records system.

SYSTEM NAME: COMMERCE/DEPT-12, OIG Investigative Records.

SECURITY CLASSIFICATION: Sensitive but Unclassified (SBU).

SYSTEM LOCATION: U.S. Department of Commerce, Office of Inspector General, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; U.S. Department of Commerce, Office of Inspector General, Regional Offices, and investigative site(s) used in the course of OIG investigation(s).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM: In connection with its investigative duties, DOC OIG maintains records in its records system on the following categories of

individuals insofar as they are relevant to any investigation or preliminary inquiry undertaken to determine whether to commence an investigation: subjects of investigations; complainants; witnesses; confidential and non-confidential informants; contractors; subcontractors; recipients of federal funds and their contractors/subcontractors and employees; individuals interacting with DOC employees or management; current, former, and prospective DOC employees; alleged violators of DOC rules and regulations; union officials; individuals who are investigated and/or interviewed; persons suspected of violations of administrative, civil, and/or criminal provisions; grantees; sub-grantees; lessees; licensees; persons engaged in official business with the DOC; or other persons identified by the OIG or by other agencies, constituent units of the DOC, and members of the general public in connection with the authorized functions of the OIG. The names of individuals and related information may be received by referral or through inquiries initiated at the discretion of the Inspector General in the conduct of assigned duties.

CATEGORIES OF RECORDS IN THE SYSTEM: The system contains investigative reports and materials gathered or created with regard to investigations of administrative, civil, and criminal matters by DOC OIG and other Federal, State, local, tribal, territorial, non-governmental, international, foreign regulatory, or foreign law enforcement agencies or entities. Categories of records may include: complaints; requests to investigate; information contained in criminal, civil, or administrative referrals; statements from subjects and/or witnesses; affidavits, transcripts, police reports, photographs, and/or documents relative to a subject's prior criminal record; medical records; accident reports; materials and intelligence information from other governmental investigatory or law enforcement organizations; information relative to the status of a particular complaint or investigation, including any determination relative to criminal prosecution, civil, or administrative action; general case management documentation; subpoenas and evidence obtained in response to subpoenas; evidence logs; pen registers; correspondence; records of investigation; and other data and evidence collected or generated by OIG's Office of Investigations while conducting its official duties.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM: The Inspector General Act of 1978, 5 U.S.C. App. 3, as amended.

PURPOSE: The records contained in this system are used by DOC OIG to carry out its statutory responsibilities under the Inspector General Act of 1978, 5 U.S.C. App. 3, as amended, to conduct and supervise investigations, prevent and detect fraud, waste, and abuse, and promote economy, efficiency, and effectiveness in DOC programs and operations. The records are used in the course of investigating individuals and entities suspected of criminal, civil, or administrative misconduct and in supporting related judicial and administrative proceedings.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system of records may be disclosed, as a routine use, to a Federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current license, if necessary to obtain information relevant to a DOC decision concerning the assignment, hiring, or retention of an individual, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual when the individual has requested assistance from the Member with respect to the subject matter of the record.

4. A record in this system of records may be disclosed, as a routine use, to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular A-19 at any stage of the legislative coordination and clearance process as set forth in that Circular.
5. A record in this system of records may be disclosed, as a routine use, to the Department of Justice in connection with determining whether disclosure thereof is required by the Freedom of Information Act (5 U.S.C. § 552).
6. A record in this system may be transferred, as a routine use, to the Office of Personnel Management for personnel research purposes; as a data source for management information; for the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained; or for related manpower studies.
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his or her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs under authority of 44 U.S.C. §§ 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose and any other relevant (i.e. GSA or DOC) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the appropriate agency or entity, whether Federal, State, local, tribal, territorial, foreign, or international, charged with the responsibility for investigating or prosecuting a violation of any law, rule, regulation or order. Routine use for law enforcement purposes also includes disclosure to individuals or to agencies, whether Federal, State, local, foreign, or international, when necessary to further the ends of an investigation.
9. A record from this system of records may be disclosed, as a routine use, to representatives of the Department of Justice (DOJ) or of any other agency that is responsible for representing DOC interests in connection with judicial, administrative or other proceedings. This includes circumstances in which (1)

the DOC or OIG, or any component thereof; (2) any employee of the DOC or OIG in his or her official capacity; (3) any employee of the DOC or OIG in his or her individual capacity, where DOJ has agreed to represent or is considering a request to represent the employee; or (4) the United States or any of its components, is a party to pending or potential litigation or has an interest in such litigation; in which the DOC or OIG is likely to be affected by the litigation, or in which the DOC or OIG determines that the use of such records by the DOJ is relevant and necessary to the litigation; provided, however, that in each case, the DOC or OIG determines that disclosure of records to the DOJ or representative is a use of the information that is compatible with the purpose for which the records were collected. Records may also be disclosed to representatives of DOJ and other U.S. Government entities, to the extent necessary, to obtain their advice on any matter relevant to an OIG investigation.

10. A record from this system of records may be disclosed, as a routine use, to any source from which additional information is requested in order to obtain information relevant to: a decision by either the DOC or OIG concerning the hiring, assignment, or retention of an individual or other personnel action; the issuance, renewal, retention, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract; or the issuance, retention, or revocation of a license, grant, award, contract, or other benefit to the extent the information is relevant and necessary to a decision by the DOC or OIG on the matter.

11. A record from this system of records may be disclosed, as a routine use, to a Federal, State, local, tribal, territorial, foreign, international, or other public authority in response to its request in connection with: the hiring, assignment, or retention of an individual; the issuance, renewal, retention, or revocation of a security clearance; the reporting of an investigation of an individual; the execution of a security or suitability investigation; the letting of a contract; or the issuance, retention, or revocation of a license, grant, award, contract, or other benefit conferred by that entity to the extent that the information is relevant and necessary to the requesting entity's decision on the matter.

12. A record in this system of records may be disclosed, as a routine use, in the event that a record, either by itself or in combination with other information, indicates a violation or a potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto; or a violation or potential violation of a contract provision. In these circumstances, the relevant records in the system may be referred, as a routine use, to the appropriate agency or entity, whether Federal, State, local, tribal, territorial, foreign, or international charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, order, or contract.

13. A record in this system of records may be disclosed, as a routine use, to any source from which additional information is requested, either private or governmental, to the extent necessary to solicit information relevant to any investigation, audit, or evaluation.

14. A record in this system of records may be disclosed, as a routine use, to a foreign government or international organization pursuant to an international treaty, convention, implementing legislation, or executive agreement entered into by the United States.

15. A record in this system of records may be disclosed, as a routine use, to contractors, grantees, consultants, or volunteers performing or working on a contract, service, grant, cooperative agreement, job, or other activity for the DOC or OIG, who have a need to access the information in the performance of their duties or activities. When appropriate, recipients will be required to comply with the requirements of the Privacy Act of 1974 as provided in 5 U.S.C. § 552a(m).

16. A record in this system of records may be disclosed, as a routine use, to representatives of the Office of Personnel Management, the Office of Special Counsel, the Merit Systems Protection Board, the Federal Labor Relations Authority, the Equal Employment Opportunity Commission, the Office of Government Ethics, and other Federal agencies in connection with their efforts to carry out their responsibilities to conduct examinations, investigations, and/or settlement efforts, in connection with

administrative grievances, complaints, claims, or appeals filed by an employee, and such other functions promulgated in 5 U.S.C. §§ 1205-06.

17. A record in this system of records may be disclosed, as a routine use, to a grand jury agent pursuant to a Federal or State grand jury subpoena or to a prosecution request that such record be released for the purpose of its introduction to a grand jury.

18. A record in this system of records may be disclosed, as a routine use, to the Departments of the Treasury and Justice in circumstances in which OIG seeks to obtain, or has in fact obtained, an ex parte court order to obtain tax return information from the Internal Revenue Service.

19. A record in this system of records may be disclosed, as a routine use, to any Federal official charged with the responsibility to conduct qualitative assessment reviews of internal safeguards and management procedures employed in investigative operations for purposes of reporting to the President and Congress on the activities of OIG. This disclosure category includes other Federal Offices of Inspectors General and members of the Council of Inspectors General on Integrity and Efficiency, and officials and administrative staff within their investigative chain of command, as well as authorized officials of DOJ and its component, the Federal Bureau of Investigation.

20. A record in this system of records may be disclosed, as a routine use, to appropriate agencies, entities, and persons when (1) it is suspected or determined that the security or confidentiality of information in the system of records has been compromised; (2) it is determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identify theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by OIG, DOC, or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with efforts to respond to the suspected or confirmed compromise and to prevent, minimize, or remedy such harm.

21. A record in this system of records may be disclosed, as a routine use, to the public or to the media for release to the public, following consultation with the DOC Chief Privacy Officer, when the matter under investigation has become public knowledge or the Inspector General determines that such disclosure is necessary to preserve confidence in the integrity of the Inspector General audit, inspection, review, or investigative process, or is necessary to demonstrate the accountability of DOC employees, officers or individuals covered by the system, unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

22. A record in this system of records may be disclosed, as a routine use, to Congress, congressional committees, or the staffs thereof, in order to fulfill the Inspector General's responsibility, as mandated by the Inspector General Act of 1978, to keep the Congress, in connection with its oversight and legislative functions concerning the administration of programs and operations administered or financed by DOC, fully and currently informed concerning fraud and other serious problems, abuses, and deficiencies concerning the administration of programs and operations administered or financed by DOC.

DISCLOSURE TO CONSUMER REPORTING AGENCIES: None.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING,
AND DISPOSING OF RECORDS IN THE SYSTEM:**

STORAGE: Paper records and other media (photographs, audio recording, diskettes, CDs, etc.) are stored in GSA-approved security containers with combination locks in a secured area. Electronic records are maintained on two servers, a data server which maintains the IG-CIRTS database, and a file server which maintains case files and related materials. Both servers are maintained in a secured, restricted-area facility.

RETRIEVABILITY: Paper records are retrieved by alphabetical indices cross referenced to file numbers. Electronic records are retrieved via 'Secure Socket Layer' (SSL) encryption search

mechanisms. Electronic searches may be performed by search criteria that include case numbers, names of individuals or organizations, and other key word search variations.

SAFEGUARDS: Paper records are kept in locked cabinets, secured rooms, in a guarded building, and used only by authorized screened personnel. Electronic records are stored on two servers maintained in a locked facility that is secured at all times by security systems and video cameras. Data in the system are encrypted and password protected. Access to electronic records is restricted to DOC OIG staff individually authorized to access the IG-CIRTS application. Passwords are changed every 90 days. Backup tapes are stored in a locked and controlled room in a secure off-site facility.

RETENTION AND DISPOSAL: Records are retained and disposed of in accordance with the DOC OIG Records Retention Schedules approved by the National Archives and Records Administration.

SYSTEM MANAGER NAME AND ADDRESS: Deputy Assistant Inspector General for Investigations, Room 7898c, Office of Inspector General, United States Department of Commerce, 1401 Constitution Ave., N.W., Washington, D.C. 20230.

NOTIFICATION PROCEDURE: The Inspector General has exempted this system from the procedures of the Privacy Act relating to individuals' requests for notification of the existence of records on themselves.

RECORD ACCESS PROCEDURE: The Inspector General has exempted this system from the access procedures of the Privacy Act.

CONTESTING RECORDS PROCEDURE: The Inspector General has exempted this system from the contest procedures of the Privacy Act.

RECORD SOURCE CATEGORIES: DOC OIG collects information from a wide variety of sources, including information from the DOC and other Federal, State, and local agencies, subjects, witnesses,

complainants, victims, confidential and non-confidential sources, individuals, and non-governmental entities.

SYSTEM EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT: Under 5 U.S.C.

552a(j)(2), the head of any agency may exempt any system of records within the agency from certain provisions of the Privacy Act of 1974, if the agency or component that maintains the system performs as its principal function any activities pertaining to the enforcement of criminal laws. The Inspector General Act of 1978, 5 U.S.C. App. 3, as amended, mandates the Inspector General to recommend policies for, and to conduct, supervise and coordinate activities in the Department and between the Department and other Federal, State and local government agencies with respect to all matters relating to the prevention and detection of fraud in programs and operations administered or financed by the Department, and to the identification and prosecution of participants in such fraud. Under the Act, whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law, the Inspector General must report the matter expeditiously to the Attorney General. In addition to these principal functions pertaining to the enforcement of criminal laws, the Inspector General may receive and investigate complaints on information from various sources concerning the possible existence of activities constituting violations of law, rules or regulations, or mismanagement, gross waste of funds, abuses of authority or substantial and specific danger to the public health and safety. The provisions of the Privacy Act of 1974 from which exemptions are claimed under 5 U.S.C. 552a(j)(2) are as follows: 5 U.S.C. 552a(c)(3) and (4); 5 U.S.C. 552a(d); 5 U.S.C. 552a(e)(1), (2) and (3); 5 U.S.C. 552a(e)(4)(G), (H), and (I); 5 U.S.C. 552a(e)(5) and (8); 5 U.S.C. 552a(f); 5 U.S.C. 552a(g).

To the extent that the exemption under 5 U.S.C. 552a(j)(2) is held to be invalid, then the exemptions under 5 U.S.C. 552a(k)(1), (k)(2), and (k)(5) are claimed for all material which meets the criteria of these three subsections.

Provisions of the Privacy Act of 1974 from which exemptions are claimed under 5 U.S.C. 552a(k)(1), (k)(2) and (k)(5) are as follows: 5 U.S.C. 552a(c)(3); 5 U.S.C. 552a(d); 5 U.S.C. 552a(e)(1); 5 U.S.C. 552a(e)(4)(G), (H), and (I); 5 U.S.C. 552a(f).

Reasons for exemptions: In general, the exemption of this information and material is necessary in order to accomplish the law enforcement function of the Office of Inspector General, to prevent disclosure of classified information as required by Executive Order, to prevent subjects of investigations from frustrating the investigatory process, to prevent the disclosure of investigative techniques, to fulfill commitments made to protect the confidentiality of sources, to maintain access to sources of information, and to avoid endangering these sources and law enforcement personnel. Detailed reasons follow:

Reasons for exemptions under 5 U.S.C. 552a(j)(2) and (k)(2):

(1) 5 U.S.C. 552a(c)(3) requires that upon request, an agency must give an individual named in a record an accounting which reflects the disclosure of the record to other persons or agencies. This accounting must state the date, nature and purpose of each disclosure of the record and the name and address of the recipient. The application of this provision would alert subjects of an investigation to the existence of the investigation and that such persons are subjects of that investigation. Since release of such information to subjects of an investigation would provide the subjects with significant information concerning the nature of the investigation, it could result in the altering or destruction of documentary evidence, improper influencing of witnesses, and other activities that could impede or compromise the investigation.

(2) 5 U.S.C. 552a(c)(4), (d), (e)(4)(G) and (H), (f) and (g) relate to an individual's right to be notified of the existence of records pertaining to such individual; requirements for identifying an individual who requests access to records; the agency procedures relating to access to records and the content of information contained in such records; and the civil remedies available to the individual in the event of adverse determinations by an agency concerning access to or amendment of information

contained in records systems. This system is exempt from the foregoing provisions for the following reasons: To notify an individual at the individual's request of the existence of records in an investigative file pertaining to such individual, or to grant access to an investigative file could interfere with investigative and enforcement proceedings, deprive co-defendants of a right to a fair trial or other impartial adjudication, constitute an unwarranted invasion of personal privacy of others, disclose the identity or confidential sources, reveal confidential information supplied by these sources and disclose investigative techniques and procedures.

(3) 5 U.S.C. 552a(e)(4)(I) requires the publication of the categories of sources of records in each system of records. The application of this provision could disclose investigative techniques and procedures and cause sources to refrain from giving such information because of fear of reprisal, or fear of breach of promises of anonymity and confidentiality. This would compromise the ability to conduct investigations, and to identify, detect, and apprehend violators.

(4) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose of the agency required by statute or Executive Order. An exemption from the foregoing is needed:

a. Because it is not possible to detect relevance or necessity of specific information in the early stages of a criminal or other investigation.

b. Relevance and necessity are questions of judgment and timing. What appears relevant and necessary when collected may ultimately be determined to be unnecessary. It is only after the information is evaluated that the relevance and necessity of such information can be established.

c. In any investigation the Inspector General may obtain information concerning the violations of laws other than those within the scope of his or her jurisdiction. In the interest of effective law enforcement, the Inspector General should retain this information as it may aid in establishing patterns of

criminal activity, and provide leads for those law enforcement agencies charged with enforcing other segments of criminal or civil law.

d. In interviewing persons, or obtaining other forms of evidence during an investigation, information may be supplied to the investigator which related to matters incidental to the main purpose of the investigation but which may relate to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated.

(5) 5 U.S.C. 552a(e)(2) requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privilege under Federal programs. The application of the provision would impair investigations of illegal acts, violations of the rules of conduct, merit system and any other misconduct for the following reasons:

a. In certain instances the subject of an investigation cannot be required to supply information to investigators. In those instances, information relating to a subject's illegal acts, violations of rules of conduct, or any other misconduct, etc., must be obtained from other sources.

b. Most information collected about an individual under investigation is obtained from third parties such as witnesses and informers. It is not feasible to rely upon the subject of the investigation as a source for information regarding his or her activities.

c. The subject of an investigation will be alerted to the existence of an investigation if any attempt is made to obtain information from subject. This could afford the individual the opportunity to conceal any criminal activities to avoid apprehension.

d. In any investigation, it is necessary to obtain evidence from a variety of sources other than the subject of the investigation in order to verify the evidence necessary for successful litigation.

(6) 5 U.S.C. 552a(e)(3) requires that an agency must inform the subject of an investigation who is asked to supply information of:

a. The authority under which the information is sought and whether disclosure of the information is mandatory or voluntary,

b. The purposes for which the information is intended to be used,

c. The routine uses which may be made of the information, and

d. The effects on the subject, if any, of not providing the requested information. The reasons for exempting this system of records from the foregoing provision are as follows:

(i) The disclosure to the subject of the investigation as stated in (b) above would provide the subject with substantial information relating to the nature of the investigation and could impede or compromise the investigation.

(ii) If the subject were informed of the information required by this provision, it could seriously interfere with undercover activities requiring disclosure of undercover agents' identity and impairing their safety, as well as impairing the successful conclusion of the investigation.

(iii) Individuals may be contacted during preliminary information-gathering in investigations before any individual is identified as the subject of an investigation. Informing the individual of the matters required by this provision would hinder or adversely affect any present or subsequent investigations.

(7) 5 U.S.C. 552a(e)(5) requires that records be maintained with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in making any determination about an individual. Because the law defines "maintain" to include the collection of information, complying with this provision would prevent the collection of any data not shown to be

accurate, relevant, timely, and complete at the moment of its collection. In gathering information during the course of an investigation it is not possible to determine this prior to collection of the information. Facts are first gathered and then placed into a logical order which objectively proves or disproves criminal behavior on the part of the suspect. Material which may seem unrelated, irrelevant, incomplete, untimely, etc., may take on added meaning as an investigation progresses. The restrictions in this provision could interfere with the preparation of a complete investigative report.

(8) 5 U.S.C. 552a(e)(8) requires an agency to make reasonable efforts to serve notice on an individual when any record of such individual is made available to any persons; under compulsory legal process when such process becomes a matter of public record. The notice requirements of this provision could prematurely reveal an ongoing criminal investigation to the subject of the investigation.

Reasons for exemptions under 5 U.S.C. 552a(k)(1):

(1) 5 U.S.C. 552a(c)(3) requires that an agency make accountings of disclosures of records available to individuals named in the record at their request. These accountings must state the date, nature and purpose of each disclosure of the record and the name and address of the recipient. The application of this provision would alert subjects of an investigation to the existence of the investigation, and that such persons are subjects of that investigation, information which if known might cause damage to national security.

(2) 5 U.S.C. 552a(d), (e)(4)(G) and (H), and (f) relate to an individual's right to be notified of the existence of records pertaining to such individual; requirements for identifying an individual who requests access to records; and the agency procedures relating to access to records, and the content of information contained in such records. This system is exempt from the foregoing provisions for the following reasons: To notify an individual at the individual's request of the existence of records in an investigative file pertaining to such individual or to grant access to an investigative file could interfere with investigations

undertaken in connection with national security; or could disclose the identity of sources kept secret to protect national security or reveal confidential information supplied by these sources.

(3) 5 U.S.C. 552a(e)(4)(I) requires the publication of the categories of sources of records in each system of records. The application of this provision could disclose the identity of sources kept secret to protect national security.

(4) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose of the agency required by statute or Executive Order. An exemption from the foregoing is needed:

a. Because it is not possible to detect relevance or necessity of specific information in the early stages of an investigation involving national security matters.

b. Relevance and necessity are questions of judgment and timing. What appears relevant and necessary when collected may ultimately be determined to be unnecessary. It is only after the information is evaluated that the relevance and necessity of such information can be established.

c. In any investigation the Inspector General may obtain information concerning the violators of laws other than those within the scope of his or her jurisdiction. In the interests of effective law enforcement, the Inspector General should retain this information as it may aid in establishing patterns of criminal activity, and provide leads for those law enforcement agencies charged with enforcing other segments of criminal or civil law.

d. In interviewing persons, or obtaining forms of evidence during an investigation, information may be supplied to the investigator which relate to matters incidental to the main purpose of the investigation but which may relate to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated.

Reasons for exemptions under 5 U.S.C. 552a(k)(5):

(1) 5 U.S.C. 552a(c)(3) requires that an agency make accountings of disclosures of records available to individuals named in the records at their request. These accountings must state the date, nature and purpose of each disclosure of the record and the name and address of the recipient. The application of this provision would alert subjects of an investigation to the existence of the investigation and that such persons are subjects of that investigation. Since release of such information to subjects of an investigation would provide the subject with significant information concerning the nature of the investigation, it could result in the altering or destruction of documentary evidence, improper influencing of witnesses, and other activities that could impede or compromise the investigation.

(2) 5 U.S.C. 552a(d), (e)(4)(G) and (H), and (f) relate to an individual's right to be notified of the existence of records pertaining to such individual; requirements for identifying an individual who requests access to records; and the agency procedures relating to access to records and the content of information contained in such records. This system is exempt from the foregoing provisions for the following reasons: To notify an individual at the individual's request of the existence of records in an investigative file pertaining to such individual or to grant access to an investigative file could interfere with investigative and enforcement proceedings; co-defendants of a right to a fair trial; constitute an unwarranted invasion of personal privacy of others; disclose the identity of confidential sources and reveal confidential information supplied by these sources; and disclose investigative techniques and procedures.

(3) 5 U.S.C. 552a(e)(4)(I) requires the publication of the categories of sources of records in each system of records. The application of this provision could disclose investigative techniques and procedures and cause sources to refrain from giving such information because of fear of reprisal, or fear of breach of promises of anonymity and confidentiality. This would compromise the ability to conduct investigations, and to make fair and objective decisions on questions of suitability for Federal employment and related issues.

(4) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose of the agency required by statute or Executive Order. An exemption from the foregoing is needed:

a. Because it is not possible to detect relevance or necessity of specific information in the early stages of an investigation.

b. Relevance and necessity are questions of judgment and timing. What appears relevant and necessary when collected may ultimately be determined to be unnecessary. It is only after that information is evaluated that the relevance and necessity of such information can be established.

c. In any investigation the Inspector General may obtain information concerning the violations of laws other than those within the scope of his or her jurisdiction. In the interest of effective law enforcement, the Inspector General should retain this information as it may aid in establishing patterns of criminal activity, and provide leads for those law enforcement agencies charged with enforcing other segments of criminal or civil law.

d. In interviewing persons, or obtaining other forms of evidence during an investigation, information may be supplied to the investigator which relate to matters incidental to the main purpose of the investigation but which may relate to matters under investigative jurisdiction of another agency. Such information cannot readily be segregated.

December 16, 2011_____
Date

Jonathan R. Cantor
Chief Privacy Officer
Department of Commerce

[FR Doc. 2012-898 Filed 01/18/2012 at 8:45 am; Publication Date: 01/19/2012]